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18 **UNITED STATES DISTRICT COURT**  
19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
20 **SAN FRANCISCO & OAKLAND DIVISION**

21 **JOHN DOE & JANE DOE, on**  
22 **behalf of themselves and all others**  
23 **similarly situated,**

24 Plaintiffs,

25 v.

26 **META PLATFORMS, INC.,**

27 Defendant.

Case No. 3:22-cv-07557

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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**CLASS ACTION COMPLAINT**

*“We do not have an adequate level of control and explainability over how our systems use data ... if we can’t enumerate all the data we have—where it is; where it goes; how it’s used—then how can we make commitments about it to the outside world?”*

- **Meta engineering memo (2021)**

*“Facebook’s internal controls ... have been very limited and were not effective at enforcing Facebook’s policy or preventing the receipt of sensitive data.”*

- **New York Department of Financial Services,  
Report on Investigation of Facebook, Inc. Data  
Privacy Concerns (2021)**

**I. Introduction**

Major tax filing services have been quietly transmitting sensitive financial information to Meta Platforms, Inc. (“Meta”) when Americans file their taxes online. Plaintiffs John Doe and Jane Doe were amongst the Americans whose confidences were breached. They thus bring this Complaint, on behalf of themselves and all others similarly situated, and in support thereof allege as follows.<sup>1</sup>

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<sup>1</sup> Statements related to Mr. Doe’s and Ms. Doe’s own experiences are within their personal knowledge. All other allegations are the result of investigation by the undersigned attorneys.

## II. Summary of the Action

1. Meta’s “Pixel” is piece of code that logs users’ activities on third-party websites and sends the details back to Meta.<sup>2</sup> It has now emerged that major online tax-filing services such as H&R Block, TaxAct, and TaxSlayer embedded the Pixel in their websites and sent tens of millions of filers’ tax-return data to Meta without their consent in violation of federal law.

2. The Pixel sent Meta the tax-filers’ names, email addresses, adjusted gross incomes, tax-filing statuses, refund amounts, dependents’ college scholarship amounts, and their dependents’ names—and perhaps more. It did so regardless whether the filer had an account on Meta’s social media platforms like Facebook or Instagram. And even when filers **expressly declined** to share their information, the Pixel collected it anyway.

3. In its contract with Facebook users, Meta promised that it “requires” businesses that use the Pixel “to have lawful rights to collect, use, and share your data before providing any data to us.” In actuality, Meta makes no effort to enforce that promise—relying on a broken honor-system that has resulted in repeated, documented violations of Meta’s own contractual promises and state and federal law. That is precisely what occurred here.

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<sup>2</sup> Meta is the company formerly known as Facebook, Inc., and is now the parent company to Facebook, Instagram, WhatsApp, and much more.

4. Meta's actions amount to (i) breach of contract, (ii) breach of the duty of good faith and fair dealing, (iii) intrusion upon seclusion, (iv) violation of the Electronic Communications Privacy Act, (v) violation of the California Invasion of Privacy Act, (vi) negligent misrepresentation, and (vii) violation of California's Unfair Competition Law.

### III. Parties

5. Plaintiff John Doe is a Georgia resident. Mr. Doe filed his taxes using H&R Block's online tax filing service from 2016 to 2020, and was thus amongst the persons who were spied on by the Pixel. Mr. Doe is also a Facebook user.

6. Plaintiff Jane Doe is a California resident. Ms. Doe filed her 2020 taxes using H&R Block's online tax filing service and was thus amongst the persons who were spied on by the Pixel. Ms. Doe is also a Facebook user.

7. Defendant Meta Platforms, Inc., formerly known as Facebook, Inc.,<sup>3</sup> is a Delaware corporation headquartered in Menlo Park, California. Meta does business throughout the United States and the world.

### IV. Jurisdiction & Venue

#### A. Subject-Matter Jurisdiction

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<sup>3</sup> Facebook changed its name to Meta in October 2021. This was a name change rather than creation of a separate legal entity and merger. Meta therefore *is* Facebook and successor liability is not at issue.

1           8. This Court has subject-matter jurisdiction pursuant to 28  
2 U.S.C. § 1332(d) (*i.e.*, the Class Action Fairness Act) because the amount  
3 in controversy exceeds \$5,000,000, exclusive of interest and costs, and a  
4 member of the plaintiff class is a citizen of a different state than the  
5 Defendant.

6           9. This Court further has subject-matter jurisdiction pursuant  
7 to 28 U.S.C. § 1331 because this action arises in part under 18 U.S.C. §  
8 2510 *et seq.* (*i.e.*, the Electronic Communications Privacy Act). The Court  
9 has jurisdiction over the remaining state-law claims pursuant to 28  
10 U.S.C. § 1367 because the state-law claims form part of the same  
11 controversy as the Electronic Communications Privacy Act claim under  
12 Article III of the United States Constitution.

13           **B. Personal Jurisdiction**

14           10. This Court has general personal jurisdiction over Meta  
15 because Meta's principal place of business is in Menlo Park, California.

16           **C. Venue & Divisional Assignment**

17           11. Venue is proper in this district because a substantial part of  
18 the events or omissions giving rise to the claim occurred in this judicial  
19 district. Meta developed the Pixel from its headquarters in Menlo Park  
20 and continues to operate the Pixel from that location to this day.

21           12. For these same reasons, divisional assignment to the San  
22 Francisco and Oakland Division is appropriate pursuant to Civil L.R. 3-  
23 2(c). Facebook's Menlo Park headquarters sits in San Mateo County,  
24 which is encompassed by said Division.

## V. Factual Allegations

### A. Meta's Business

13. Meta is an American multinational technology company. It owns and operates several of the most popular social media and technology products in the world—including Facebook, Instagram, and WhatsApp.

14. Like most social-media companies, Meta does not in general charge consumers to use its platforms. Meta makes its money, instead, by selling advertising space to third parties. These advertisers pay for the privilege of putting their notices in front of the billions of consumers who use Meta's products. In 2021, Meta had nearly \$115 billion in advertising revenue—which made up 97.5% of its total haul.<sup>4</sup>

15. Giving advertisers more and more effective means of targeting potential customers is central to Meta's business. From the time Mark Zuckerberg announced Facebook Ads back in 2007, the main selling point of social media advertising—as opposed to traditional mediums—was the ability to customize, micro-target, and monitor advertising campaigns. From the beginning, Facebook Ads gave advertisers access to data on users' Facebook activity, demographics, and interests. Over time, as competing social media platforms emerged, a user-data arms race began. Platforms looked for ways to gather more

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<sup>4</sup> Securities and Exchange Commission, *Form 10-K for Meta Platforms, Inc. (2021)*, at 93, available at <https://perma.cc/Q6PF-2FGS>.

1 and more data, and thereby build more and more detailed user profiles.  
2 Enter: The Pixel.

3 **B. How The Pixel Works**

4 16. Facebook introduced the Pixel in 2015. The Pixel is a piece of  
5 computer code that records users' activity on sites all around the  
6 internet and transmits logs of that activity back to Meta. It is  
7 enormously popular. At least six million distinct websites use the Pixel—  
8 including 30% of the world's 100,000 most-visited.

9 17. Meta markets the Pixel to third parties that use Facebook  
10 Ads as a way to “make sure [their] ads are shown to the right people” on  
11 the platform. Meta boasts that the Pixel allows third parties to improve  
12 users experience on their websites, target advertisements more  
13 effectively, and drive more sales.

14 18. Meta gives the Pixel to third-party advertisers free of charge  
15 and instructs them how to use it. In its directions for setting up the Pixel,  
16 Meta notes that advertisers should “[s]imply place the pixel base code ...  
17 on all pages of your website.” Meta further recommends that advertisers  
18 “add [the Pixel’s] base code between the opening and closing <head> tags  
19 on every page where you will be tracking website visitor actions.” Doing  
20 so “reduces the chances of browsers or third-party code blocking the  
21 [P]ixel’s execution” and “executes the code sooner, increasing the chance  
22 that your visitors are tracked before they leave your page.”

23 19. Once a third-party advertiser sets up the Pixel in this way,  
24 the information collection and sharing begins. As soon as a user takes  
25



1 any action on a Pixel-enabled webpage, Meta's source code commands  
2 the user's computer to direct a log of that action to Meta. This happens  
3 contemporaneously. In other words, Meta receives real-time logs of a  
4 user's actions even while that user's interaction with the target website  
5 is ongoing.

6 20. The information Meta gathers on users is then used to create  
7 or add to Meta's consumer dossiers. The key organizational hook is the  
8 "c\_user cookie." This cookie is a means of identification for users of  
9 Meta's platforms. Each Meta user account has a unique c\_user cookie.  
10 Meta uses the c\_user cookie to record and organize user activities and  
11 communications.

12 21. Once a consumer dossier is created under the c\_user heading,  
13 Meta adds information as it is collected by the Pixel and Meta's other  
14 tracking tools. A typical instance includes the user's real name, location,  
15 email address, friends, interests, and personal identifiers such as IP  
16 addresses<sup>5</sup> and device identifiers. When that consumer visits a third-  
17 party domain with the Pixel enabled, Meta collects information such as  
18 the sub-pages they visit, the buttons they click, the options they select  
19 (e.g., from a multiple-choice form), and often the things they type.

20 22. In public communications, Meta has suggested that the  
21 information it receives about consumers is "hashed" or otherwise

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23  
24 <sup>5</sup> An Internet Protocol (IP) Address is a unique address that identifies a device  
25 on the internet or a local network.

1 obscured such that Meta cannot personally identify user profiles. This is  
2 untrue. An intermediate computer user can obtain the `c_user` value for  
3 any Facebook user and match that information with the user's Facebook  
4 profile in just a few seconds, as follows.

5       a. To identify the `c_user` cookie value for any Facebook  
6 user, one simply (1) navigates to the user's Facebook page, (2)  
7 right-clicks on the mouse, (3) selects 'View Page Source,' (4) and  
8 copies the number value that appears after "`fb://profile`" in the page  
9 source code.

10       b. With the `c_user` cookie value in hand, one can then  
11 access the associated Facebook account by typing in  
12 "`www.facebook.com/#`," with "`#`" replaced with the `c_user` cookie  
13 identifier. For example, the `c_user` cookie value for Mark  
14 Zuckerberg is 4. Logging in to Facebook and typing  
15 `www.facebook.com/4` in the web browser retrieves Mark  
16 Zuckerberg's Facebook page: `www.facebook.com/zuck`.

17       23. The organizational system described above relies on subjects'  
18 pre-existing Meta-platform accounts (*e.g.*, Facebook or Instagram  
19 profiles). But when a data-collection subject doesn't have an account on  
20 Meta's platforms, the Pixel logs their activities and sends the data to  
21 Meta anyway. The dossiers Meta compiles on these persons are known  
22 as "shadow profiles." When asked by Congress about these shadow  
23 profiles, Mark Zuckerberg responded: "[W]e collect data on people who  
24 have not signed up for Facebook for security purposes." Meta has not  
25

1 otherwise publicly revealed how it organizes and uses information about  
2 non-users. Discovery in this matter will reveal the full extent of Meta's  
3 practices in this regard.

#### 4 **C. Meta's Broken Promises**

5 24. Every Facebook user is required to agree to Meta's Terms of  
6 Service, Data Policy, and Cookie Policy via a checkbox on the account  
7 signup page. The Terms, Data Policy, and Cookie Policy and binding on  
8 Meta and on Facebook users.

9 25. Meta's Data Policy expressly provides that Meta "requires"  
10 businesses that use the Pixel "to have lawful rights to collect, use, and  
11 share your data before providing any data to us." Meta further claims  
12 that "[i]t is against [Meta's] policies for websites and apps to send  
13 sensitive information about people through our Business Tools," and  
14 that Meta's "system is designed to filter out potentially sensitive data it  
15 detects."

16 26. Each of these promises and representations is false. Meta  
17 does not verify that advertisers have obtained adequate consent from  
18 users before transmitting their sensitive data. Instead, the Pixel is made  
19 available to any willing publisher regardless of their privacy policies,  
20 consent processes, or the nature of their business. Nor does Meta  
21 effectively filter the sensitive data it receives. To the contrary, the  
22 company routinely collects, stores, and uses consumers' sensitive data  
23 without appropriate consent and—in some instances—in violation of  
24  
25  
26

1 state and federal laws and regulations. Specifically, consider the  
2 following.

3 27. In 2019, the Wall Street Journal reported that Facebook was  
4 receiving sensitive user health data from at least 11 popular mobile  
5 apps. The data being sent included information such as users' heart  
6 rates, blood pressure readings, menstrual cycles, and pregnancy  
7 statuses. This information was reportedly being collected without valid  
8 user consent.

9 28. In response to these revelations, the Governor of New York  
10 ordered the New York State Department of Financial Services  
11 ("NYDFS") to undertake an investigation. In its final report, issued in  
12 February 2021, NYDFS noted first that Facebook's Business Tools  
13 Terms prohibited app developers and other third parties from sending  
14 Facebook certain data.<sup>6</sup> These Terms provide that **"You [*i.e.*, the  
15 developer] will not share Customer Data with us that you know  
16 or reasonably should know ... includes health, financial  
17 information, or other categories of sensitive information  
18 (including any information defined as sensitive under  
19 applicable law)."** Nevertheless, during NYDFS's investigation,  
20 Facebook's representatives admitted that the company "routinely  
21  
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24 <sup>6</sup> New York Dep't of Financial Services, *Report on Investigation of Facebook Inc.  
25 Data Privacy Concerns* (2021), available at <https://perma.cc/G7YJ-7AE5>.  
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1 obtained sensitive data from app developers” in violation of its own  
2 policies.

3 29. The NYDFS Final Report went on to note the following:

4 a. “[N]otwithstanding Facebook’s policy that app  
5 developers should not transmit sensitive data to Facebook, there  
6 were many examples where the developers violated that policy and  
7 Facebook did indeed—unwittingly, it contends—receive, store, and  
8 analyze sensitive data.”

9 b. “The information provided by Facebook has made it  
10 clear that Facebook’s internal controls on this issue have been very  
11 limited and were not effective at enforcing Facebook’s policy or  
12 preventing the receipt of sensitive data.”

13 c. “Facebook has repeatedly rebuffed NYDFS’s efforts to  
14 obtain information that would have provided more fulsome  
15 transparency with respect to the scope and scale of the problem.  
16 Though Facebook acknowledges the problem—*i.e.*, that in the past  
17 it did receive sensitive information from app developers contrary  
18 to its own policy—it has failed to provide sufficient detail about,  
19 among other things, specifically what kinds of sensitive  
20 information was obtained, how regularly it was received, or which  
21 app developers violated the rules by transmitting such  
22 information.”

23 d. “As noted, the sharing of sensitive user information by  
24 an app developer is a violation of Facebook Business Tools’ terms  
25

1 of service. Merely stating a rule, however, has little meaning if the  
2 rule is not enforced, and the unfortunate fact is that Facebook does  
3 little to track whether app developers are violating this rule and  
4 takes no real action against developers that do.”

5 e. “The Department finds Facebook’s efforts here  
6 seriously lacking and recommends it undertake significant  
7 additional steps to police its own rules. Even assuming a strong  
8 screening program on the back end, Facebook must take steps to  
9 determine whether app developers are transmitting sensitive  
10 data.”

11 30. In June 2022—nearly a year and a half after NYDFS issued  
12 its report—investigative journalists at The Markup revealed that the  
13 Pixel was installed on the patient portals and websites of dozens of the  
14 nation’s top hospitals.<sup>7</sup> Using a custom-built “Pixel inspector,” these  
15 journalists showed that Meta was collecting patients’ names, the dates  
16 and times of their medical appointments, and the names of their doctors.  
17 Meta is currently facing several class-action lawsuits arising from this  
18 collection of patients’ medical data, which allege that the collection of  
19 this information violated the Health Insurance Portability and  
20 Accountability Act (“HIPAA”).

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23 <sup>7</sup> The Markup, *Facebook is Receiving Sensitive Financial Information from*  
24 *Hospital Websites* (June 16, 2022), available at <https://perma.cc/L8GJ-ZBVY>.

1           31. In April 2022, the online news outlet Motherboard published  
2 a leaked internal memorandum that revealed the true nature of Meta’s  
3 data-gathering operation.<sup>8</sup> In that memorandum, Meta engineers  
4 analyzed their company’s “privacy infrastructure” and made  
5 recommendations for “long-range investments” to address mounting  
6 regulatory and legal scrutiny. They were shockingly direct. Some of their  
7 sentiments were as follows.

8           a. “We do not have an adequate level of control and  
9 explainability over how our systems use data, and thus we can’t  
10 confidently make controlled policy changes or external  
11 commitments such as ‘we will not use X data for Y purpose.’ And  
12 yet, this is exactly what regulators expect us to do, increasing our  
13 risk of mistakes and misrepresentation.”

14           b. “If we can’t enumerate all the data we have—where it  
15 is; where it goes; how it’s used—then how can we make  
16 commitments about it to the outside world?”

17           c. “We’ve built systems with open borders. The result of  
18 these open systems and open culture is well described with an  
19 analogy: Imagine you hold a bottle of ink in your hand. This bottle  
20 of ink is a mixture of all kinds of user data (3PD [i.e., Third-Party  
21 Data], 1PD [i.e., First-Party Data], SCD [i.e., Sensitive Customer  
22

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24           <sup>8</sup> Motherboard, *ABP Privacy Infra, Long Range Investments* (2021), available  
25 at [perma.cc/W4MN-UPGQ](https://perma.cc/W4MN-UPGQ).

1 Data], Europe, etc.) You pour that ink into a lake of water (our open  
 2 data systems; our open culture) ... and it flows ... everywhere. How  
 3 do you put that ink back in the bottle? How do you organize it  
 4 again, such that it only flows to the allowed places in the lake?”

5 32. This internal document “admit[ted] what [experts] long  
 6 suspected: that there is a data free-for-all inside Facebook and the  
 7 company has no control whatsoever over the data it holds.”<sup>9</sup> Meta knows  
 8 it is collecting sensitive data, violating state and federal laws, and  
 9 breaching its agreements with users—but has failed to do anything  
 10 about it.

#### 11 **D. Meta Gathers Tax Filers’ Financial Data**

12 33. Against this backdrop, in November 2022, The Markup  
 13 published additional revelations about Meta’s data-gathering  
 14 practices.<sup>10</sup> “Major tax filing services such as H&R Block, TaxAct, and  
 15 TaxSlayer have been quietly transmitting sensitive financial  
 16 information to Facebook when Americans file their taxes,” The Markup  
 17 found, “including data on users’ income, filing status, refund amounts,  
 18 and dependents’ college scholarship amounts.” More than 150 million  
 19 Americans file individual tax returns electronically each year. The  
 20 Markup’s reporting revealed that Meta gathered financial information

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 22  
 23 <sup>9</sup> Motherboard, *Facebook Doesn’t Know What It Does With Your Data, Or Where it Goes: Leaked Document* (2022), available <https://perma.cc/S6AR-ZRDJ>.

24 <sup>10</sup> The Markup, *Tax Filing Websites Have Been Sending Users’ Financial*  
 25 *Information to Facebook* (Nov. 28, 2022), available at <https://perma.cc/NPW4-LV6F>.



1 from tens of millions of those filers through the Pixel, embedded on tax-  
2 filing services' websites.

3 34. When users sign up for the popular service TaxAct, for  
4 example, they are asked to provide information to calculate their  
5 returns—including how much money they make and the amount and  
6 nature of their investments. A Pixel on TaxAct's website sent that data  
7 to Facebook, including users' filing status, their adjusted gross income,  
8 and the amount of their tax refund. The Pixel also sent the names of  
9 filers' dependents in an obfuscated but reversible format. TaxAct has  
10 about three million annual users.

11 35. Tax-preparation heavyweight H&R Block similarly offers its  
12 users an online filing option, with 6.7 million online filings in 2020. H&R  
13 Block embedded a Pixel on its site that gathered filers' health savings  
14 account usage and dependents' college tuition grants and expenses.

15 36. TaxSlayer, another widely used filing service, sent personal  
16 information to Facebook as part of Facebook's "advanced matching  
17 system," which gathers information on web visitors to link them to  
18 Facebook accounts. The information gathered through the Pixel on  
19 TaxSlayer's site included phone numbers, the name of the user filling  
20 out the form, and the names of any dependents added to the form.  
21 TaxSlayer users completed more than 10 million federal and state  
22 returns last year.

23 37. In addition, the Pixels embedded by TaxSlayer and TaxAct  
24 used a feature called "automatic advanced matching." That feature  
25

1 scans forms looking for fields that contain personally identifying  
 2 information like phone numbers, first names, last names, or email  
 3 addresses, and then send the detected information to Meta. On  
 4 TaxSlayer's site this feature collected phone numbers and the names of  
 5 filers and their dependents. On TaxAct it collected the names of  
 6 dependents.

#### 7 **E. Why Meta's Actions Were Unlawful**

##### 8 *i. Disclosing tax-return information without consent* 9 *is a crime.*

10 38. The transmission of tax filers' data to Meta was unlawful. It  
 11 is a crime for any business that "prepar[es], or provid[es] services in  
 12 connection with the preparation of" federal tax returns to "disclose any  
 13 information furnished to him for, or in connection with, the preparation  
 14 of any such return," or to "use[] any such information for any purpose  
 15 other than to prepare, or assist in preparing, any such return."<sup>11</sup> For  
 16 purposes of this provision, "tax return information means any  
 17 information, including, but not limited to, a taxpayer's name, address or  
 18 identifying number, which is furnished in any form or manner for, or in  
 19 connection with, the preparation of a tax return of the taxpayer."<sup>12</sup>

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22 \_\_\_\_\_  
 23 <sup>11</sup> 28 U.S.C. § 7216.

24 <sup>12</sup> 26 C.F.R. § 301.7216-1(b)(3).  
 25

39. As described in Section V(D), *infra*, that is precisely what occurred here. Several of the nation’s largest online tax-preparation services installed the Pixel on their websites and thereby transmitted “tax return information” to Meta, including filers’ names, income, filing status, refund amounts, names of dependents, and dependents’ college scholarship amounts.

40. There are circumstances in which tax preparers may disclose or use tax-return information, including by providing that information to third parties, **but only with valid consent**.<sup>13</sup> The standards for obtaining valid consent are detailed at length in the applicable regulations. Substantively, the consent must “specify the tax return information to be disclosed or used by the return preparer,” “describe the particular use authorized,” and “identify the specific recipient (or recipients) of the tax return information.”<sup>14</sup> Procedurally, the consent must be “knowing and voluntary”<sup>15</sup> and “signed and dated by the taxpayer.”<sup>16</sup> In addition, “conditioning the provision of any services on the taxpayer’s furnishing consent will make the consent involuntary,”

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<sup>13</sup> There are, in addition, some circumstances in which a tax preparer may disclose tax return information *without* the filers’ consent, such as disclosure in response to a subpoena or other lawful process. *See* 26 C.F.R. § 301.7216-2. No such exception is relevant in these circumstances.

<sup>14</sup> 26 C.F.R. § 301-7216-3(a)(3)(B).

<sup>15</sup> 26 C.F.R. § 301-7216-3(a)(1).

<sup>16</sup> 26 C.F.R. § 301-7216-3(a)(3)(E).

1 and thus “the consent will not satisfy the requirements” of the  
 2 regulations.<sup>17</sup> Finally, the consent cannot be retroactive. “A taxpayer  
 3 must provide written consent **before** a tax return preparer discloses or  
 4 uses the taxpayer’s tax return information.”<sup>18</sup>

5 *ii. Filers did not consent to disclose their tax-return*  
 6 *information.*

7 41. The prohibition on disclosure of tax-return information  
 8 applies to H&R Block, TaxAct, and TaxSlayer (collectively, henceforth,  
 9 the “Tax-Filing Services”). Each of these businesses is “engaged in the  
 10 business of preparing, or providing services in connection with the  
 11 preparation of, returns of the tax imposed by [the Internal Revenue  
 12 Code].”<sup>19</sup> TaxAct admits this in its Privacy Policy, where it notes that:  
 13 “[t]he use and disclosure of Tax Return Information is governed by  
 14 Section 301-7216 of the Internal Revenue Code.” Similarly, TaxSlayer’s  
 15 Privacy Policy notes that “Section 301-7216 of the Internal Revenue  
 16 Code specifically governs the use and disclosure of Tax Return  
 17 Information.”

18 42. Each of the Tax-Filing Services has adopted a Privacy Policy  
 19 that details its data-usage practices. These policies purport to be valid  
 20 consents for at least some disclosures and uses of filers’ data. For the

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21  
 22 <sup>17</sup> 26 C.F.R. § 301-7216-3(a)(1).

23 <sup>18</sup> 26 C.F.R. § 301-7216-3(b).

24 <sup>19</sup> 28 U.S.C. § 7216.

1 reasons set out below, none of these purported consents were valid for  
2 the purpose of authorizing transmission of filers' tax-return information  
3 to Meta via the Pixel.

4 43. Each of the Tax-Filing Services' websites required users to  
5 agree to its terms of use and privacy policy as a condition of signing up  
6 for their online tax-preparation services. Two of the services—H&R  
7 Block and TaxAct—required users to click a checkbox indicating their  
8 consent to these agreements before signing up. The third, TaxSlayer,  
9 noted that users would be deemed to agree to its privacy policy and  
10 license agreement simply by clicking "Create Account." Users cannot  
11 access any of the Tax-Filing Services online offerings without agreeing  
12 to these purported consents. At the same time, none of the three  
13 businesses required users to open their privacy policies or terms of use  
14 or sign and date them. In fact, none of the Tax-Filing Services terms of  
15 use or privacy policies contained spaces for dates or signatures.

16 44. In light of these facts, it is clear that H&R Block's, TaxAct's,  
17 and TaxSlayer's purported consents failed to satisfy the applicable  
18 requirements as a procedural matter. As noted above, the regulations  
19 dictate that "conditioning the provision of any services on the taxpayer's  
20 furnishing consent will make the consent involuntary, and the consent  
21 will not satisfy the requirements of this section."<sup>20</sup> Because each of the  
22 Tax-Filing Services conditioned their provision of services on users'

23  
24 \_\_\_\_\_  
25 <sup>20</sup> 26 C.F.R. § 301-7216-3(a)(1).

1 accepted of their terms of use and privacy policies, all three of their  
2 purported consents failed outright.

3 45. In addition, as noted above, the regulations dictate that “a  
4 consent to disclose or use tax return information must be signed and  
5 dated by the taxpayer.”<sup>21</sup> None of the Tax-Filing Services’ websites  
6 required users to **open** their terms and conditions or privacy policies—  
7 much less sign and/or date them. In fact, none of the Tax-Filing Services’  
8 terms and conditions or privacy policies contained signature or date  
9 blocks. Again, each of the Tax-Filing Services purported consents fails  
10 outright.

11 46. In addition, the Tax-Filing Services’ purported consents fail  
12 for substantive reasons. As noted, the regulations require that a valid  
13 consent “identify the specific recipient (or recipients) of the tax return  
14 information.”<sup>22</sup> None of the Tax-Filing Services’ terms and conditions or  
15 privacy policies mention Meta or Facebook as a recipient of tax-return  
16 information. Further, a valid consent must “specify the tax return  
17 information to be disclosed or used by the return preparer” and “describe  
18 the particular use authorized.”<sup>23</sup> None of the Tax-Filing Services’ terms  
19  
20

21 \_\_\_\_\_  
22 <sup>21</sup> 26 C.F.R. § 301-7216-3(a)(3)(E).

23 <sup>22</sup> 26 C.F.R. § 301-7216-3(a)(3)(B).

24 <sup>23</sup> 26 C.F.R. § 301-7216-3(a)(3)(B).

1 of use or privacy policies mention the Pixel or specify the information it  
2 provided to Meta.

3 47. Because the Pixel began transmitting filers' information to  
4 Meta contemporaneously after filers' signup on the Tax-Filing Services'  
5 websites, and because user consent to disclose tax-return information  
6 cannot be granted retroactively,<sup>24</sup> the Tax-Filing Services' only  
7 opportunity to secure valid consent under the regulations and federal  
8 law was during the sign-up process. Because they failed to do so for the  
9 reasons described above, their actions were unlawful.

## 10 VI. Causes of Action & Class Allegations

11 48. In light of the foregoing allegations, Plaintiffs bring the  
12 following causes of action on behalf of themselves and all others  
13 similarly situated.

### 14 Count One

#### 15 Breach of Contract

16 49. All preceding allegations are incorporated as if fully set forth  
17 herein.

18 50. Meta requires Facebook users to click a box indicating that,  
19 "By clicking Sign Up, you agree to our Terms, Data Policy, and Cookies  
20 Policy."

21 51. The Terms are binding on Facebook and its users.

22  
23 \_\_\_\_\_  
24 <sup>24</sup> 26 C.F.R. § 301-7216-3(b).  
25

52. The Data Policy is binding on Facebook and its users.

53. The Cookies Policy is binding on Facebook and its users.

54. The Data Policy promises users that Facebook “requires each of [Meta’s] partners to have lawful rights to collect, use, and share your data before providing any data to [Meta].”

55. Facebook breached this contractual promise, as described in detail above, by not requiring its partners that are tax preparation service providers to obtain valid user consent before sharing user data through the Pixel.

56. In addition to the express contract provision set forth above, an implied contract existed between Facebook and its users that Facebook would not conspire with others to violate users' legal rights to privacy in their individually identifiable financial and personal information.

57. Plaintiffs are Facebook account holders who used online tax filing services through which Facebook obtained their individually identifiable financial and personal information.

58. The user financial and personal information that Facebook obtained in breach of the contract included tax filers' names, usernames, IP addresses, the devices they used, their incomes, their tax-filing status, the amount of their tax returns, their number of dependents, the names of their dependents, and the amount of their dependents' college scholarships (if any).



## Good Faith & Fair Dealing

60. All preceding allegations are incorporated as if fully set forth herein.

3           62.   The contract specifies that California law governs the parties’  
4   relationship.

5           63. Meta prevented Plaintiff and the class members from  
6 receiving the full benefit of the contract by intercepting the content of  
7 protected individually identifiable financial and personal information  
8 exchanged with tax filing services.

64. By doing so, Meta abused its power to define terms of the contract, specifically the meaning of the term “require” in Meta’s promise that it would “require” partners to have lawful rights to share users’ data with Meta before doing so and then taking no action (and actually encouraging) tax filing services to share protected financial and personal information without valid user authorization.

15 65. By doing so, Meta did not act fairly and in good faith.

16           66. Meta's breach caused Plaintiffs and the class members the  
17 following damages:

18           a.     Nominal damages for breach of contract;

19                   b.     General damages for invasion of privacy rights in an  
20                   amount to be determined by a jury without reference to specific  
21                   pecuniary harm;

c. Sensitive and confidential information including financial and personal information that Plaintiffs and the class members intended to remain private are no longer private;

1 d. Meta eroded the essential confidential nature of the  
2 user-tax preparer relationship

3 e. Meta took something of value from Plaintiffs and the  
4 class members and derived benefits therefrom without the  
5 Plaintiffs' or the class members' knowledge or informed consent  
6 and without sharing the benefit of such value, and;

7 f. Benefit of the bargain damages in that Meta's contract  
8 stated that payment for the service would consist of a more limited  
9 set of collection of personal information than that which Meta  
10 actually charged.

### 11 **Count Three**

#### 12 **Intrusion Upon Seclusion – Constitutional Invasion of** 13 **Privacy**

14 67. All preceding allegations are incorporated as if fully set forth  
15 herein.

16 68. Article I, Section I of the California Constitution provides:

17 *All people are by nature free and independent and have*  
18 *inalienable rights. Among these are enjoying and*  
19 *defending life and liberty, acquiring, possessing, and*  
*protecting property, and pursuing and obtaining safety,*  
*happiness, and **privacy**.*

20 69. Plaintiffs and the class members had no knowledge and did  
21 not consent or authorize Meta to obtain the content of their  
22 communications with their tax-service providers as described herein.  
23  
24  
25  
26

1           70. Plaintiffs and the class members enjoyed objectively  
2 reasonable expectations of privacy surrounding communications with  
3 their tax-preparation providers based on:

4           a. The tax-preparation providers' status as trusted  
5 recipients of their most sensitive financial and personal  
6 information;

7           b. The laws and regulations prohibiting disclosure of tax  
8 return information cited herein;

9           c. the Electronic Communications Privacy Act, and;

10           d. Meta's promise that it would "require" partners to have  
11 lawful permission to share their data before Facebook would collect  
12 it.

13           71. Plaintiffs' and the class members' claims are based on the  
14 following private facts:

15           a. that Plaintiffs and the class members are customers of  
16 the various tax-preparation providers;

17           b. the specific dates and times Plaintiffs and the class  
18 members clicked to log-in or log-out of the various tax-preparation  
19 providers' user portals;

20           c. the specific and detailed communications exchanged  
21 while logged in the tax-preparation providers' user portals, and;

22           d. the specific dates and times when Plaintiffs and the  
23 class members submitted their taxes and information incorporated  
24 into those tax filings.

1           72. Meta's conduct was intentional and intruded on Plaintiffs'  
2 and the class members' financial and personal communications which  
3 constitute private conversations, matters, and data.

4           73. Meta's conduct in acquiring Plaintiffs' and the class  
5 members' financial and personal tax-related communications would be  
6 highly offensive to a reasonable person because:

7           a. Meta conspired with Plaintiffs' and the class members'  
8 tax-preparation service providers to violate a cardinal rule of the  
9 provider-preparer relationship;

10           b. Meta's conduct violated federal law designed to protect  
11 tax-preparation services' users' privacy;

12           c. Meta's conduct violated Electronic Communications  
13 Privacy Act;

14           d. Meta's conduct violated the express promises it made to  
15 users.

16           74. Meta's breach caused Plaintiff and the class members the  
17 following damages:

18           a. Nominal damages for breach of contract;

19           b. General damages for invasion of privacy rights in an  
20 amount to be determined by a jury without reference to specific  
21 pecuniary harm;

22           c. Sensitive and confidential information including  
23 financial and personal information that Plaintiffs and the class  
24 members intended to remain private are no longer private;

d. Meta eroded the essential confidential nature of the user-tax preparer relationship

e. Meta took something of value from Plaintiffs and the class members and derived benefits therefrom without the Plaintiffs' or the class members' knowledge or informed consent and without sharing the benefit of such value, and;

f. Benefit of the bargain damages in that Meta's contract stated that payment for the service would consist of a more limited set of collection of personal information than that which Meta actually charged.

#### **Count Four**

#### **Violation of the Electronic Communications Privacy Act**

75. All preceding allegations are incorporated as if fully set forth herein.

76. The Electronic Communications Privacy Act ("ECPA") prohibits the intentional interception of the contents of any electronic communication.<sup>25</sup>

77. The ECPA protects both the sending and receipt of communications.

78. The ECPA provides a private right of action to any person whose electronic communications are intercepted.<sup>26</sup>

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<sup>25</sup> 18 U.S.C. § 2511.

<sup>26</sup> 18 U.S.C. § 2520(a)

1           79. Meta intentionally intercepted the electronic  
2 communications that Plaintiffs and the class members exchanged with  
3 their tax-preparation service providers on the providers properties  
4 where the Pixel was present.

5           80. The transmissions of data between Plaintiffs and the class  
6 members and their tax-preparation service providers qualify as  
7 communications under the ECPA.<sup>27</sup>

8           81. Meta acquired user communications with their tax-  
9 preparation service providers as alleged herein contemporaneous with  
10 their making.

11           82. The intercepted communications include:

12           a. the content of user registrations for various tax-  
13 preparation service portals, including clicks on buttons to  
14 “Register” or “Signup” for said portals;

15           b. the contents of communications that users exchange  
16 with their tax-preparation providers inside various web portals  
17 immediately before logging out of those portals; and

18           c. the contents of communications relating to users’  
19 financial and personal information provided for the purpose of  
20 preparing tax filings.

21  
22  
23 \_\_\_\_\_  
24           <sup>27</sup> 18 U.S.C. § 2510(12).  
25

- a. The cookies Meta used to track users' communications;
- b. The users' browsers;
- c. The users' computing devices;
- d. Meta's web-servers;
- e. The web-servers of the properties of the tax-preparation service providers where the Pixel was present; and
- f. The Pixel source code deployed by Meta to effectuate its acquisition of users' tax-related communications.

85. Meta received the content of user communications through the surreptitious redirection of them from the users' computing devices to Meta.

87. Meta did not obtain legal authorization to obtain user communications with their tax-preparation service providers.

88. Meta did not require any tax-preparation service provider to obtain the lawful rights to share the content of user communications relating to tax filings.

<sup>28</sup> 18 U.S.C. § 2510(5)



4           90. In acquiring the content of user communications relating to  
5 users' financial and personal information provided for the purpose of  
6 preparing tax filings, Meta had a purpose that was tortious, criminal,  
7 and designed to violate state constitution provisions including:

- 8           a.       a knowing intrusion into a private place, conversation,  
9           or matter that would be highly offensive to a reasonable person;  
10          b.       violation of 42 U.S.C. § 1320d-6, which is a criminal  
11          offense punishable by fine or imprisonment;  
12          c.       violation of state unfair business practice statutes;  
13          d.       violation of the laws and regulations prohibiting  
14          disclosure of tax return information cited herein;  
15          e.       violation of Article I, section 1 of the California  
16          Constitution.

17           91. Meta knew that such conduct would be highly offensive, yet  
18 continued to use the Pixel on tax-preparation service providers’  
19 properties for that purpose.

Count Five

Violation of the California Invasion of Privacy Act

22           92. All preceding allegations are incorporated as if fully set forth  
23 herein.

1           93. The California Invasion of Privacy Act (“CIPA”) is codified at  
2 Cal. Penal Code §§ 630-38. The Act begins with its statement of purpose:

3           The legislature hereby declares that advances in  
4 science and technology have led to the development of  
5 new devices and techniques for the purpose of  
6 **eavesdropping upon private communications** and  
7 that the invasion of privacy resulting from the  
8 continual and increasing use of such devices and  
9 techniques has created a serious threat to the free  
10 exercise of personal liberties and **cannot be tolerated**  
11 **in a free and civilized society.**<sup>29</sup>

12           94. CIPA goes on to provide, in pertinent part:

13           Any person who, by means of any machine, instrument,  
14 or contrivance, or in any other manner .... willfully and  
15 without the consent of all parties to the communication,  
16 or in **any unauthorized manner**, reads, or attempts  
17 to read, or to learn the contents or meaning of **any**  
18 **message, report, or communication** while the same  
19 is in transit or passing over any wire, line, or cable, or  
20 is being sent from, or received at any place within this  
21 state; or who uses, or attempts to use, in any manner,  
22 or for any purpose, or to **communicate in any way,**  
23 **any information so obtained**, or who aids, agrees  
24 with, employs, or conspires with any person or persons  
25 to lawfully do, or permit, or cause to be done any of the  
26 acts or things mentioned above in this section, **is**  
27 **punishable by a fine not exceeding two thousand**  
28 **five hundred dollars.**<sup>30</sup>

29           95. CIPA further provides, in pertinent part, that it is unlawful  
30 for any person to “intentionally and without the consent of all parties to  
31 a confidential communication,” to “use[] [a] recording device to ... record  
32

33 \_\_\_\_\_  
34 <sup>29</sup> Cal. Penal Code § 630.

35 <sup>30</sup> Cal. Penal Code § 631(a).

1 the confidential communication.” As used in the statute, a “confidential  
2 communication” is “any communication carried on in circumstances as  
3 may reasonably indicate that any part to the communication desired it  
4 to be confined to the parties thereto[.]”<sup>31</sup>

5 96. Meta is a “person” within the meaning of CIPA §§ 631 and  
6 632.

7 97. Meta did not have the consent of all parties to learn the  
8 contents of or record the confidential communications at issue.

9 98. Meta is headquartered in California, designed and contrived  
10 and effectuated its scheme to track users’ tax-related communications  
11 from California, and has adopted California substantive law to govern  
12 its relationship with users.

13 99. At all relevant times, Meta’s conduct alleged herein was  
14 without the authorization and consent of Plaintiffs and class members.

15 100. Meta’s actions were designed to learn or attempt to learn the  
16 meaning of the confidential tax-related communications users  
17 exchanged with their tax-preparation service.

18 101. Meta’s learning of or attempt to learn the contents of tax  
19 filers’ communications occurred while they were in transit or in the  
20 process of being sent or received.

## 21 **Count Six**

### 22 **Negligent Misrepresentation**

23  
24 <sup>31</sup> Cal. Penal Code § 632.



1           111. California’s Unfair Competition Law (“UCL”) is codified at  
2 California Business and Professions Code Section 17200. The UCL  
3 prohibits any “unlawful, unfair, or fraudulent business act or practice  
4 and unfair, deceptive, untrue or misleading advertising ...”

5           112. Meta has engaged in unlawful, fraudulent, and unfair business  
6 acts and practices in violation of the UCL. Specifically, Meta has  
7 engaged in unlawful acts or practices under the UCL by its violations of  
8 the California Constitution’s right to privacy, the Electronic  
9 Communications Protection Act, and the California Invasion of Privacy  
10 Act, through the acts and practices set forth in this Complaint.

11           113. Meta has engaged in fraudulent business acts or practices in  
12 violation of the UCL because its misrepresentations and omissions  
13 regarding its requirement that businesses have lawful rights to collect,  
14 use, and share Plaintiffs’ and the class members’ data before providing  
15 any data to Meta. Meta’s receipt of the confidential information at issue  
16 was intended to, were likely to, and did deceive reasonable consumers  
17 such as Plaintiffs and the class members. The information Meta  
18 misrepresented and concealed would be, and is, material to reasonable  
19 consumers because Meta does not require businesses to have lawful  
20 rights to collect, use, and share Plaintiffs’ and the class members’ data  
21 before providing any data to Meta and Meta receives the confidential  
22 information at issue nonetheless.

23           114. Meta’s actions offend public policy.  
24  
25  
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1           115. Meta’s conduct, misrepresentations, and omissions have also  
2 impaired competition within the tax-preparation market in that those  
3 actions have prevented Plaintiffs and the class members from making  
4 fully informed decisions about whether to communicate online with their  
5 tax-preparation service providers and to use their tax-preparation  
6 service providers’ website in the first instance.

7           116. Plaintiffs and the class members have suffered an injury in  
8 fact as a result of Meta’s unfair, unlawful, and/or deceptive practices, to  
9 wit, the disclosure of their personally identifiable data which has value  
10 as it is demonstrated by the use and sale of that data by Meta. While  
11 only an identifiable “trifle” of injury is required under the UCL, as set  
12 out above Plaintiffs and the class members value their private financial  
13 and personal information more than a trifle. Sale of this confidential and  
14 valuable information has diminished the value of such information to  
15 Plaintiffs and the class members.

16           117. Meta’s actions caused damage to and loss of Plaintiffs’ and  
17 the class members’ property right to control the dissemination and use  
18 of their personally identifiable tax-related data and communications.

19           118. Meta’s representation that it requires businesses to “have  
20 lawful rights to collect, use, and share [Plaintiffs’ and the class  
21 members’] data before providing any data” to Meta was untrue. Again,  
22 had Plaintiffs and the class members known these facts, they would not  
23 have used the tax-preparation service providers’ websites.

119. The wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Meta's business. Meta's wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated in the State of California.

120. Plaintiffs and the class members request that this Court enjoin Meta from continuing its unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and the class members, in the form of restitution, any money Meta acquired through its unfair competition.

**Class Allegations**  
**(Applicable to All Counts)**

121. Plaintiffs bring this action individually and on behalf of a nationwide class, pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3).

122. Plaintiffs file this as a class action on behalf of themselves and the following class (the "Class"):

All Facebook users who are current or former users of tax-preparation service providers in the United States with web properties through which Meta acquired tax return information, and for which neither the tax-preparation service provider nor Meta obtained a valid consent.

123. Excluded from the Class are the Court and its personnel and the Defendant and its officers, directors, employees, affiliates, legal representatives, predecessors, successors and assigns, and any entity in which any of them have a controlling interest.

1           124. The members of the Class are so numerous that joinder is  
2 impracticable. More than ten million individuals used H&R Block  
3 Online, TaxAct, or TaxSlayer to file their taxes in 2021 alone. The Pixel  
4 appears to have collected information about all users of these services.

5           125. Common questions of law and fact are apt to drive the  
6 resolution of this case, exist as to all members of the Class, and  
7 predominate over any questions affecting solely individual members of  
8 the Class including, but not limited to, the following:

9           a. Whether the Pixel is designed to and in fact does send  
10 individually identifiable financial and personal tax-related  
11 information to Meta;

12           b. Whether the Terms and Privacy Notice are valid  
13 contracts;

14           c. Whether Meta failed to require tax-preparation service  
15 providers to have lawful rights to share user data with Meta before  
16 deploying the Pixel;

17           d. Whether Meta acquired the content of filers'  
18 communications;

19           e. Whether the Class members provided Meta with  
20 authorization to acquire their communications with their tax-  
21 preparation service providers;

22           f. Whether the Pixel's presence and use on tax-  
23 preparation service providers' websites is highly offensive;  
24  
25  
26



1           g. Whether Meta's acquisition of the content of  
2 communications between users and their tax-preparation service  
3 providers occurred contemporaneous to their making;

4           h. Whether Meta breached its contract with users;

5           i. Whether the information at issue has economic value;

6           j. Whether Meta unjustly profited from its collection of  
7 the Class members' sensitive financial and personal tax-related  
8 information.

9           126. The named Plaintiffs' claims are typical of the claims of other  
10 Class members, as all members of the Class were similarly affected by  
11 Meta's wrongful conduct in violation of federal and California law, as  
12 complained of herein.

13           127. The named Plaintiffs will fairly and adequately protect the  
14 interest of the members of the Class and have retained counsel  
15 competent in class action litigation. The named Plaintiffs have no  
16 interests that conflict with, or are otherwise antagonistic to, the  
17 interests of other Class members.

18           128. A class action is superior to all other available methods for  
19 the fair and efficient adjudication of this controversy since the joinder of  
20 all members is impracticable. Further, as the damages that individual  
21 Class members have suffered may be relatively small, the expense and  
22 burden of individual litigation makes it impossible for members of the  
23 Class to individually redress the wrongs done to them. There will be no  
24 difficulty in the management of this action as a class action.

**VII. Prayer for Relief**

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that this Court grant the following relief.

a. Certify the proposed Class, designation Plaintiffs John Doe and Jane Doe as the named representatives of the Class, and designating the undersigned as Class Counsel;

b. Award compensatory damages, including statutory damages where available, to Plaintiff and the Class against Defendant for all damages sustained as a result of Defendant's wrongdoing, in an amount to be proven at trial, including interest thereon;

c. Award punitive damages on the causes of action that allow for them and in an amount that will deter Defendant and others from like conduct;

d. Award attorneys' fees and costs, as allowed by law including, but not limited to, California Code of Civil Procedure Section 1021.5;

e. Award pre-judgment and post-judgment interest, as provided by law, and;

f. Such other, further, and different relief as the Court deems proper under the circumstances.

**VIII. Demand for Jury Trial**

Plaintiffs hereby demand a jury trial on all issues so triable.

1 Dated: December 1, 2022 Respectfully submitted,

2  
3   
4

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